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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 5:22-cv-00949-KK-(SHKx)

Assigned for All Purposes to:
Hon. Kenly K. Kato – Courtroom 3

**COUNTY DEFENDANTS’
OPPOSITION TO PLAINTIFF’S
MOTION IN LIMINE NO. 2 TO
EXCLUDE EVIDENCE
REGARDING DECEDENT’S DRUG
HISTORY AND ALCOHOL USE
UNKNOWN TO OFFICERS**

Plaintiffs,

Trial Date: June 2, 2025

vs.

Complaint filed: 06/07/2022
FAC filed: 10/18/22
SAC filed: 01/13/23
TAC filed: 05/12/23

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISIAH KEE;
MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 6-10, inclusive,

Defendants.

I. INTRODUCTION

It cannot be credibly disputed that decedent Hector Puga had a significant and well documented history of drug and alcohol abuse. It is equally undisputed that Puga was under the influence of both drugs and alcohol at the time of the shooting, as confirmed by the post-mortem toxicology reports. Plaintiffs now seek to whitewash the facts, by excluding any and all such references to drugs and alcohol solely on the grounds that Puga's history and the post-mortem toxicology reports were not available to the Defendants at the time of the shooting. Specifically, Plaintiffs argue that "the central factual dispute in this case is whether Mr. Puga posed an immediate threat of death or serious bodily injury to anyone when the officers fired at Mr. Puga." (Mtn pg. 9). From this overly simplistic premise, the entirety of Plaintiffs' arguments focuses on the argument that such evidence is not relevant to determining that singular issue. First, Plaintiffs' representation is contrary to the holding in *Boyd v. City & County of San Francisco*, 576 F.3d 983 (2009), which remains good law and was not effectively distinguished. Second, Plaintiffs' analysis fails to account for many other significant issues that the jury will be considering during their deliberations of which Puga's drug and alcohol history are extremely probative, including Plaintiffs' negligence theory, pre death pain and suffering, loss of life and interference with familial relationship claims. *See, Johnson v. General Mills Inc.*, 2012 WL 13015023, at *1 (C.D. Cal. 2012) ("A party cannot use a motion in limine to sterilize the other party's presentation of the case.").

II. PUGA'S DRUG AND ALCOHOL HISTORY IS RELEVANT TO THE EXCESSIVE FORCE ANALYSIS PURSUANT TO *BOYD*

A peace officer is permitted to introduce evidence of facts that were unknown to him at the time of the incident where such facts corroborate or increase the likelihood of the existence of facts that were observed and relied upon by the officer in the officer's decision to use force during the incident. *Boyd v. City and County of*

1 *San Francisco*, 576 F.3d 938 (9th Cir. 2009); *see also*, *Graham, v. Connor*, 490 U.S.
2 385, 399, n. 2 (1980); 399, n. 12 (factfinder may consider outside evidence “in
3 assessing the credibility of an officer’s account of the circumstances that prompted
4 the use of force”); *Estate of Chum v. City of Los Angeles*, 585 Fed.Appx. 435, 436
5 (9th Cir. 2014) (citing *Boyd, supra*, 576 F3d at 943-945 (“Because the challenged
6 testimony made [defendant’s] account more probable, the testimony was relevant,
7 and the district court did not abuse its discretion by admitting it”)(emphasis added).
8 Thus, in an excessive force case, “where what the officer perceived just prior to the
9 use of force is in dispute, evidence that may support one version of events over
10 another is relevant and admissible.” *Boyd, supra*, 576 F.3d at 944 (emphasis added).
11 In particular, the Ninth Circuit specifically upheld the trial court’s ruling that allowed
12 evidence from Defendants’ expert that decedent had been on drugs at the time of a
13 police shooting and was attempting suicide by cop because the evidence was “highly
14 probative of decedent’s conduct, particularly in light of [the decedent’s] erratic
15 behavior.” *Id.* at 949.

16 While Plaintiffs go to great lengths to distinguish *Boyd* on the grounds that
17 there is video, their arguments fall flat. Much like in *Boyd*, what the officers perceived
18 immediately prior to the shooting is hotly contested by Plaintiffs who contend that
19 despite law enforcement and third-party testimony, Puga never pulled a gun from his
20 waistband. Despite having multiple angles, not a single video shows Puga’s waist at
21 the time of the shooting and therefore like *Boyd*, what the officers perceived at the
22 time of the shooting is disputed. Likewise, even though multiple witnesses testified
23 Puga had a gun in his hand and a gun was found under him after the shooting, the
24 poor quality of the video makes it difficult to see the gun and therefore Plaintiffs
25 intend to also dispute that Puga had a gun still in his hand as he ran. To address
26 whether the accounts of the officers are more probably true than not, much like the
27 testimony allowed in *Boyd*, Defendants seek to admit testimony of their expert that

1 the actions of Puga were an attempt to commit suicide cop which would be consistent
2 with him pulling out a gun as testified to by the Deputies but disputed by the Plaintiffs.

3 Further, just as in *Boyd*, Plaintiffs have offered no scientific challenge to
4 Defendants' suicide by cop evidence and like in *Boyd* this court should find that the
5 evidence of Decedent's drug use in the context of this theory is highly relevant and
6 more probative than prejudicial. *Boyd*, 576 F.3d at 948-949. Moreover, as set forth
7 by the Court in *Boyd*, when considering the issue, "admission of evidence in support
8 of the suicide by cop theory falls within the exception for otherwise inadmissible
9 character evidence carved out in Rule 404(b)." *Boyd supra*, 576 F.3d 938 (suicide by
10 cop properly considered as evidence of plan, intent and motive).

11 As such, Defendants suicide by cop evidence as supported by the drugs and alcohol
12 in decedent's system, make it more probable that decedent was trying to provoke a
13 police shooting rather than acting upon fear. *Boyd, supra*, at 944-945; *Castro v. Cnty*
14 *of LA*, 2015 WL 4694070 *5 (C.D. Cal. 2015)(evidence of intoxication admissible to
15 corroborate Defendants' version of events, where "pre-shooting conduct is
16 disputed"); *Cotton v. City of Eureka, Cal.*, No. CV 08-04386, 2010 WL 5154945, at
17 *7 (N.D. Cal.) (admitting evidence of LSD in decedent's system where witnesses
18 "observed that the Decedent's behavior ... at the time of his arrest was erratic and
19 abnormal, and possibly the result of the influence of illegal drugs.").

20 **III. PUGA'S DRUG AND ALCOHOL ABUSE IS CRUCIAL TO REFUTING**
21 **PLAINTIFF'S EVIDENCE AS TO STATE OF MIND**

22 Immediately before Puga ran to the front of his vehicle, choosing escalation
23 over surrender, he made the statement that he heard a click and that he thought the
24 officers were trying to shoot him. Plaintiffs have telegraphed that they intend to use
25 Puga's statements on scene, as well as the testimony of third-party witness Betzabeth
26 Gonzalez, that Puga appeared scared, to justify Puga's conduct. (Plaintiffs'
27 Opposition to Motion for Summary Judgment- Dkt. 111- pg 10 - "Puga expressed
28

1 concerns to the officers that he thought the officers were going to shoot him” and “he
2 sounded scared of being shot by police” and pg. 23 - “he likely turned to run because
3 he panicked at seeing several officers quickly approaching him and was scared he was
4 going to be shot”). In short, Plaintiffs seek to interject Puga’s subjective intent
5 throughout this trial while simultaneously requesting that any theory to the contrary
6 is irrelevant.

7 To refute these claims that Puga’s statements and actions were born from fear
8 alone, Defendants have retained the services of renowned forensic psychologist who
9 has offered the opinion that Puga’s actions are entirely consistent with an individual
10 who is intent on committing suicide by cop. (Plaintiff’s Exhibit A - Dr. Mohandie’s
11 report) Notably, Plaintiffs have not challenged the exemplary qualifications of
12 Defendants’ expert to state his suicide by cop opinions nor have they challenged the
13 sufficiency of the facts or data upon which his opinions were based or the reliability
14 of the methods he used. *Fed.R.Evid* 702, *Daubert, v. Merrell Dow Pharm, Inc.* 509
15 U.S. 579, 597; *Boyd v. City and County of San Francisco*, 576 F.3d 938, 946 (9th Cir.
16 2009)(Plaintiff “provides no scientific opinions challenging or refuting” Defendants
17 suicide by cop evidence)¹

18 Rather, Plaintiffs’ entire challenge is that portions of his opinions should be
19 sanitized because they are not relevant and/or prejudicial. In particular, as part of his
20 opinion that Puga’s actions were consistent with an attempt to commit suicide by cop,
21 Dr. Mohandie relied on the fact that Puga was under the influence of alcohol at the
22 time of the shooting as evidence that he was building “chemical courage”. (Plaintiff’s
23 Ex. A- page 28). This portion of Dr. Mohandie’s opinion was drawn largely from the
24 toxicology report. Likewise, Dr. Mohandie supports his suicide-by-cop opinions with
25 evidence that Puga was under the influence of methamphetamine, reference the
26

27 ¹ Similarly, there has been no Daubert challenge made to Defendants’ toxicologist
28 expert, Dr. Clark, or Defendants’ police practices expert Ken Hubbs.

1 toxicology report, as well as the significant criminal history supporting
2 methamphetamine addiction, which again is associated with heightened suicide risk.
3 (Plaintiff's Exhibit A- pg 29-30). From Puga's documented alcohol and drug history
4 coupled with the postmortem toxicology reports, Dr. Mohandie is able to reach the
5 opinion that "overall Mr. Puga demonstrates numerous empirical indicators that
6 reliably categorize this incident as suicide by cop". (*Id.*). Plaintiff should not be
7 permitted to excise two of these critical empirical indicators and effectively block
8 Defendants attempts to explain Puga's conduct as something other than fear.

9 **IV. PUGA'S DRUG AND ALCOHOL HISTORY AND TOXICOLOGY**
10 **FINDINGS ARE RELEVANT TO NEGLIGENCE**

11 In addition to asserting excessive force claims under § 1983, Plaintiffs have
12 also set forth a Negligence claim arguing the tactics used by Defendants prior to the
13 shooting caused the shooting itself. In this regard, Plaintiffs' police practices expert
14 Roger Clark has offered a number of opinions, including for example that SWAT
15 should have been called to negotiate with Puga and that the officers should not have
16 moved in to take Puga into custody, all of which he contends caused the shooting.

17 For Defendants to be held responsible under a negligence theory for pre-
18 shooting tactics, such as those described by Mr. Clark, the tactics must still be the
19 proximate cause of the shooting. *County of Los Angeles v. Mendez*, 137 S.Ct.
20 1539(2017)(ordering district court to "revisit whether proximate cause permits
21 respondents to recover damages for their shooting injuries based on the deputies'
22 failure to secure a warrant at the outset."). Defendants must therefore be able to
23 present an alternative theory to the jury through the testimony of Dr. Mohandie, that
24 given Puga's documented history of drug abuse and toxicology findings "there was
25 no ability to reason with or deescalate Puga" in his current state to challenge
26 Plaintiffs' theory that pre-shooting tactics were the proximate cause of the shooting
27 as speculated by Mr. Clark. (Plaintiff's Exhibit A- pg. 35-36).

28 Further, the comparative negligence of the decedent is also a factor for the jury

1 to consider here. In this regard, juries are instructed when considering comparative
2 fault, they should consider the negligence of the decedent. (CACI Jury Instruction
3 407). In determining Decedent's negligence, the jury is instructed that they should
4 assess "how a reasonably careful person would have acted" and that "people who
5 drink alcohol or take drugs must act just as carefully as those who do not." (CACI
6 Jury Instruction 401- Basic Standard of Care and 404- Intoxication). As such, the
7 amount of drugs and alcohol consumed by Decedent is a highly relevant factor for the
8 jury to consider as to his comparative negligence. *See, Pittman v. Bovien*, 249 Cal.
9 App. 2d 207, 217 (1967)(it is for the jury to consider whether intoxication was a
10 contributing cause of injury).

11 As such, Dr. Clark's review of the toxicology report and resulting opinion that
12 "the levels of methamphetamine and alcohol measured in Mr. Puga's blood suggests
13 with a reasonable degree of medical certainty that his non-compliant and violent
14 behavior during his encounter with the officers was caused by or contributed to his
15 intoxication with methamphetamine and alcohol at the time." (Plaintiff's Exhibit C-
16 Clark Report pg. 3). The opinions by Dr. Clark and Dr. Mohandie regarding
17 decedent's drug and alcohol intoxication strike at the very heart at Decedent's
18 comparative fault, including his efforts to commit suicide by cop.

19 **V. HUBBS' OPINIONS ARE RELEVANT TO THE USE OF FORCE**

20 Plaintiffs also seek to exclude any opinions from retained police practices expert
21 Mr. Hubbs who will opine that Puga's actions are consistent with chronic drug abuse,
22 stimulant drug use, and that Puga displayed symptoms of methamphetamine
23 psychosis. (Plaintiff's Exhibit D- Hubbs pg 67). However, the basis for these opinions
24 was founded not in Puga's drug and alcohol history, but in the actions that Puga took
25 on February 16 and 17, 2021 which were known to the officers and/or observed by
26 them. As such, Plaintiff has zero basis to exclude Hubbs Opinion #6, which analyzes
27 information that would have been known to a reasonable officer and explains to the
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1 jury that a reasonable officer would properly conclude based on their training and
2 experience that Puga displayed symptoms of stimulant use and/or methamphetamine
3 psychosis as set forth in his report and respond accordingly.

4 **V. PUGA’S DRUG AND ALCOHOL HISTORY AND ARE RELEVANT TO**
5 **DAMAGES**

6 Plaintiffs are seeking three types of damages in this case- pre death pain and
7 suffering, loss of Puga’s life, and interference with their familial
8 relationship/wrongful death damages. Puga’s drug and alcohol use are again highly
9 relevant to the assessment of all three.

10 **1) Pre Death Pain and Suffering**

11 Plaintiffs intend to argue that Puga suffered significantly before his death when
12 he was struck by a pepper ball, shot by Defendants and tased after the shooting. As
13 such, Dr. Clark’s opinions based on the toxicology report are again highly relevant.
14 As set forth in Dr. Clark’s opinions, meth intoxication causes individuals to appear to
15 have “superhuman strength or pain tolerance, likely the result of their brains not
16 recognizing pain in the same fashion when not intoxicated with these drugs.”
17 (Plaintiff’s Exhibit C- Clark pg. 4). Given what Plaintiffs will undoubtedly argue
18 was excruciating pain experienced by Puga, despite the lack of any expert testimony
19 on this subject, Defendants must be permitted to put forth their expert’s opinions as
20 to methamphetamine use and its impact on pain tolerance.

21 **2) Wrongful Death Damages**

22 Again, Defendants anticipate Plaintiffs will ask the jury for significant damages
23 for the loss of Puga’s life and separately for the loss of their familial relationship with
24 their son and father. These damages simply cannot be evaluated without due
25 consideration as to Puga’s drug and alcohol history and the fact that he may have been
26 attempting suicide that night to end his life.

27 Indisputably, Decedent’s life expectancy is at issue in this “wrongful death”
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1 case. *See, Francis v. Sauve*, 222 Cal. App. 2d 102, 121 (1963); *see also, Parsons v.*
2 *Easton*, 184 Cal. 764, 770-771 (1921) (“It is the shorter expectancy of life that is to
3 be taken into consideration [in computing wrongful death damages]; for example; if
4 as in the case here, the expectancy of life of the parents is shorter than that of the son,
5 the benefits to be considered are those only which might accrue during the life of the
6 surviving parents.”); *see also, McAsey v. U.S. Department of Navy*, 201 F.Supp.2d
7 1081, 1097 (N.D. Cal. 2002) (“In wrongful death actions, damages for pecuniary loss
8 are limited by the life expectancy of the decedent immediately before he sustained the
9 injuries which caused his death.”) (internal citations omitted); *Allen v. Toledo*, 109
10 Cal. App. 3d 415, 424 (1980) (“The life expectancy of the deceased is a question of
11 fact for the jury to decide considering all relevant factors including the deceased's
12 **health, lifestyle** and occupation”) (emphasis added); *Boyd v. City and County of San*
13 *Francisco*, 2006 WL 1390423, at *2 (N.D. Cal. 2006) (“In particular, California law
14 allows a jury to consider the decedent’s life expectancy, taking into account his
15 **health, habits** and lifestyle as well as any...**self-destructive impulses** in determining
16 these amounts.”) (emphasis added).

17 These cases are grounded in the commonsense reality that drug and alcohol
18 abuse can (and do) impact relationships and life expectancy. *See, CACI Jury*
19 *Instruction No. 3921* (wrongful death damages calculations require the jury to
20 evaluate decedent's “**health, habits, activities** [and] **lifestyle...**”) (emphasis added);
21 *Benwell v. Dean*, 249 Cal.App.2d 345, 353 (1967) (““It is always proper to make proof
22 of the relations of the decedent to the person for whose benefit the action is being
23 maintained, because such proof has a bearing upon the pecuniary loss suffered by the
24 person entitled to recovery”); *Agosto v. Trusswal Systems Corp.*, 142 F.R.D. 118,
25 120 (E.D. Pa. 1992) (“It is Plaintiff’s choice to pursue claims that necessitate the
26 introduction of life expectancy information and basic fairness dictates that Plaintiff
27 should not be allowed to make a potentially large recovery against [the defendant]

1 based on an average life span when, in reality, Plaintiff may well have a shorter than
2 average life expectancy.”); *see also*, *Lewis v. District of Columbia*, 793 F.2d 361, 363
3 (D.C. Cir. 1986) (affirming district court’s order admitting evidence of **past drug use**
4 and arrests when the evidence was probative in aiding the jury to fairly measure the
5 extent of damages for the alleged police “excessive force” claim and that its
6 prejudicial effect did not substantially outweigh its probative value).

7 Likewise, more than just a biological link is needed to establish a claim under
8 the Fourteenth Amendment. “Parents can bring a Fourteenth Amendment due process
9 claim only if they demonstrate ‘consistent involvement in a child’s life and
10 participation in child-rearing activities.’ [Citation]. ***Children must make the same***
11 ***showing.***” See, Ninth Circuit Model Civil Jury Instruction No. 9.32, “Due Process--
12 Interference with Parent/Child Relationship, “Comment, § I (citing *Wheeler*, *supra*,
13 894 F.3d at 1058). “When there is no consistent contact or assumption of some
14 parenting role, ***no relationship actually exists, and there is nothing for the***
15 ***Fourteenth Amendment to protect.***” *See*, *Pelayo*, *supra*, 2022 WL 1123117, at *24
16 (citing *Wheeler*, *supra*, 894 F.3d 1046) (emphasis added). Puga’s chosen lifestyle
17 bears on these fundamental questions.

18 Such evidence is particularly needed here because despite decedent’s
19 documented history of arrests and incarcerations involving drug and alcohol use, as
20 well as the toxicology findings, Plaintiffs adamantly denied any knowledge of the
21 same. (Gustafson Decl. ¶2-4, Exhibit 1-3). *See*, *Nelson v. County of Los Angeles*, 113
22 Cal.App.4th 783, 793 (2003) (reducing heirs’ damages in light of evidence showing
23 that heirs did not know decedent well: “[A]t the time of [decedent’s] death in 1998,
24 neither [heir] knew...he had been incarcerated for substantial periods of time...”);
25 *Chatham v. Parkhill*, 2013 WL 5912154, at *1 (S.D. Ill. 2013) (proper for defendants
26 to present “evidence of the decedents criminal history and daily drug use in order to
27 rebut evidence regarding the decedent’s relationship with his son.”); *Benwell*, *supra*,

1 249 Cal.App.2d at 350 (“[I]f it is proper for the beneficiary to produce evidence of the
2 attitude and affection on the part of the decedent for the beneficiaries...then defendant
3 should properly be able to rebut or negate such evidence.”).

4 Here Defendants seek to offer Puga’s drug and alcohol history, as well as his
5 mental state in attempting suicide by cop, as it bears directly on his life expectancy,
6 as well as the quality and character of his relationship with his heirs. *Castro v. Cnty*
7 *of LA*, 2015 WL 4694070 *7 (C.D. Cal. 2015)(“decedent’s history of drug is relevant
8 to proof both economic and non economic damages.”).

9 **VI. THE COURT SHOULD NOT EXCLUDE THIS RELEVANT**
10 **EVIDENCE**

11 All relevant evidence is inherently prejudicial, but it is only “unfair” prejudice that
12 can tip the scales to provide a basis for exclusion. *U.S. v. Hankey*, 203 F.3d 1160, 1172
13 (9th Cir. 2000). Here the scales are not so tipped as without this evidence, for the
14 reasons already argued, Defendants would be severely hindered in opposing
15 Plaintiffs’ explanation for Puga’s non-compliance, as well as be precluded from
16 providing the jury with key evidence for them to evaluate comparative negligence
17 and/or damages.

18 Further, there will be no undue consumption of time because the bulk of the
19 evidence will be offered through Dr. Mohandie. Likewise, Dr. Clark’s testimony as
20 to the toxicology findings will be brief.

21 Even if bifurcation were ordered as suggested by Plaintiffs, this only addresses
22 the evaluation of damages but still handicaps Defendants in refuting Plaintiffs’ state
23 of mind claims and/or ensuring the jury properly evaluates Plaintiffs’ negligence
24 theory. Thus, even if the Court finds that the evidence is prejudicial, the appropriate
25 remedy should be a limiting instruction, not exclusion or bifurcation. *Castro v. Cnty*
26 *of LA*, 2015 WL 4694070 *5 (C.D. Cal. 2015)(“with a proper limiting instruction to
27 the jury, the risk of unfair prejudice to plaintiffs does not substantially outweigh the
28 probative value” of evidence regarding decedent’s intoxication).

1 DATED: April 24, 2025

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9 **CERTIFICATE OF COMPLIANCE**

10 The undersigned, counsel of record for County Defendants, certifies that this
11 brief contains 3,349 words, which:

12 x complies with the word limit of L.R. 11-6.1.

13 ☐ complies with the word limit set by court order dated _____.
14

15 DATED: April 24, 2025

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